

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANNA ZBITNOFF,

Plaintiff,

v.

NATIONSTAR MORTGAGE, LLC,

Defendant.

No. C 13-05221 WHA

**ORDER DENYING MOTION
FOR TEMPORARY
RESTRAINING ORDER**

Pro se plaintiff Anna Zbitnoff has known about the looming foreclosure on the subject property since September 18, 2013 (Dkt. No. 24 at 1). She has waited, however, until New Year's Eve to seek a temporary restraining order against the sale, which is scheduled to be held on January 2, 2014. This delay alone warrants denying the restraining order. Had plaintiff noticed the motion in a timely manner, both sides could have been heard. Instead, she waited until the afternoon of New Year's Eve to seek a temporary restraining order against the sale. This tactic ensures that the other side will not have an opportunity to be heard prior to the sale. On New Year's Day, the Court will be closed. Plaintiff has no one to blame but herself. Moreover, the Court has already dismissed her complaint (on December 19, 2013). Although plaintiff was given the opportunity to seek permission to re-plead, she has not done so yet and her preview of the proposed amended complaint is not impressive.


The Court is mindful that rescheduling a foreclosure sale adds expenses to the process. If plaintiff had a more meritorious case and/or not delayed in seeking to stay the foreclosure sale, the Court may have granted a temporary restraining order. But in light of the fact that plaintiff is

1 unlikely to prevail on the merits and that she delayed in bringing this motion, the equities lean
2 against granting a restraining order.

3 Although plaintiff's motion for a temporary restraining order is denied, the lender should
4 proceed with caution and may wish to postpone the sale voluntarily until this litigation is
5 resolved. The Court, however, is not ordering the lender to do so. Motion **DENIED**.

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7 **IT IS SO ORDERED.**

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9 Dated: December 31, 2013.

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11 WILLIAM ALSUP
12 UNITED STATES DISTRICT JUDGE
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